



U.S. Citizenship  
and Immigration  
Services

Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

PUBLIC COPY

02

AUG 24 2007

FILE: EAC 06 137 52918 Office: VERMONT SERVICE CENTER Date:

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the  
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a restaurant and investment business that seeks to employ the beneficiary as an operations manager. It endeavors to classify her as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition because the proffered position does not qualify as a specialty occupation. On appeal, counsel submits a brief asserting that the offered position qualifies as a specialty occupation.

The issue to be discussed in this proceeding is whether the proffered position qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;

- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties are so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Citizenship and Immigration Services (CIS) interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) the Form I-290B with supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as an operations manager. Evidence of the beneficiary's duties includes the Form I-129 petition with attachment and the petitioner's response to the director's request for evidence. According to this evidence the beneficiary would:

- Direct and coordinate activities of business or departments concerned with the production, pricing, sales, and/or distribution of products;
- Manage staff, prepare work schedules and assign specific duties;
- Review financial statements, sales and activity reports, and other performance data to measure productivity and goal achievement and to determine areas needing cost reduction and program improvement;
- Establish and implement departmental policies, goals, objectives, and procedures, conferring with board members, organization officials, and staff members as necessary;
- Determine staffing requirements, and interview, hire and train new employees, or oversee those personnel processes;
- Monitor businesses and agencies to ensure that they efficiently and effectively provide needed services while staying within budgetary limits;
- Oversee activities directly related to making products or providing services;
- Direct and coordinate the organization's financial and budget activities to fund operations, maximize investments, and increase efficiency;
- Determine goods and services to be sold, and set prices and credit terms, based on forecasts of customer demand; and

- Manage the movement of goods into and out of production facilities.

The petitioner finds the beneficiary to be qualified for the proffered position by virtue of his foreign education and past work experience which has been determined by a credentials evaluation service to be equivalent to a bachelor's degree in business administration from an accredited college or university in the United States.

The AAO routinely consults the *Handbook* for information about the duties and educational requirements of particular occupations. The duties of the proffered position are essentially those noted for general/operations managers and food service managers. The *Handbook* notes that the formal education and experience of operations managers varies as widely as the nature of their responsibilities. Many have a bachelor's or higher degree in business administration or liberal arts, while others obtain their positions by promotion from lower level management positions. Thus, it is possible to obtain a position as a general or operations manager without a college degree by promotion from within the organization based upon performance alone. It is apparent from the *Handbook* that a baccalaureate or higher degree, in a specific specialty, is not the minimum requirement for entry into the offered position. Positions requiring a college degree are filled from a wide range of educational disciplines. A degree in a specific specialty, however, is not required.

The *Handbook* notes that a bachelor's degree in restaurant and food service management provides strong preparation for a career as a food service manager. Candidates are recruited, however, from two and four-year college hospitality management programs, as well as from technical institutes and other institutions offering programs leading to associate degrees or other formal certification. Thus, the petitioner has not established the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), that a baccalaureate or higher degree, or its equivalent, is normally the minimum requirement for entry into the position with regard to the duties of an operations manager or a food service manager.

The petitioner asserts that a degree requirement is common to the industry in parallel positions among similar organizations, and in support of that assertion submits copies of job advertisements for operations managers, food service managers and related positions. The advertisements submitted, however, do not establish the petitioner's assertion. Many of the advertisements are not from organizations similar in nature to that of the petitioner. For example, the advertisements submitted include advertisements from an asset management company investing in hedge funds, and an international insurance and finance organization seeking an alternative investment manager in support of private equity, hedge fund and mezzanine debt investments. Further, the advertisements submitted that require degrees state that the following degrees are acceptable: operations management; engineering; institutions management; nutrition; business; hospitality; finance; and hotel/restaurant management. The advertisements do not establish that a degree in a specific specialty is common to the industry for the proffered position. A number of the advertisements state that a degree is required, but do not require a degree in a specific specialty. Some do not indicate that a bachelor's degree is required, but indicate that experience alone is suitable for employment. Others state that a degree is preferred, but not required, and others require only an associate degree. The documentation submitted does not establish the first prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner asserts that it normally requires a degree for similar positions in its organization. In support of that assertion the petitioner indicated that it employs a market research analyst and two restaurant supervisors,

all of whom have a bachelor's degree or its equivalent. The petitioner did not, however, submit copies of the employees' degrees, or other documentation from the universities where the degrees were obtained to establish the degrees, or employee records to establish their employment with the petitioner. Simply going on the record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N 190 (Reg. Comm. 1972)). The petitioner has not established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the petitioner has not established that the duties of the offered position are so complex or unique that they can only be performed by an individual with a degree in a specific specialty, or that the duties are so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The petitioner makes reference to the *O\*Net* and *Dictionary of Occupational Titles (DOT)* to establish that the offered position normally requires a baccalaureate level education. The petitioner's assertions in this regard are not persuasive. Neither the *DOT's* SVP rating nor a [REDACTED] category indicate that a particular occupation requires the attainment of a baccalaureate or higher degree, or its equivalent, in a specific specialty as a minimum for entry into the occupation. An SVP rating and [REDACTED] category are meant to indicate only the total number of years of vocational preparation required for a particular position. Neither classification describes how those years are to be divided among training, formal education, and experience, nor specifies the particular type of degree, if any, that a position would require. Further, as described by the petitioner, the duties to be performed by the beneficiary do not establish that they are more unique, complex, or specialized than those normally performed by operations or food service managers in the industry who are not required to have a baccalaureate level education, or who are not required to have a bachelor's degree in a specific educational discipline. For example, the petitioner states that the beneficiary will: manage staff; prepare work schedules; assign specific duties; review financial statements, sales and activity reports and other data to measure productivity and goal achievement and to determine areas of cost reduction and program improvement; determine goods and services to be sold; set prices and credit terms; and determine staffing requirements, and interview, hire and train new employees. As described by the petitioner, all of these duties are routinely performed in the industry by management personnel and do not require the attainment of a baccalaureate level education in a specific educational discipline. The petitioner has failed to establish the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A) (2) or the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The petitioner indicates that it operates a restaurant and an investment company. The record does not contain any evidence of the petitioner's investments in small businesses or that such activity increases the complexity of the duties. Simply going on the record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N 190 (Reg. Comm. 1972)).

The petitioner has failed to establish that the offered position meets any of the criteria listed at 8 C.F.R. § 214.2(h)(4)(iii)(A). Accordingly, the AAO shall not disturb the director's denial of the petition.

Beyond the decision of the director, the petitioner submitted an evaluation of the beneficiary's education and work experience for the purpose of establishing that the beneficiary possesses the equivalent of a bachelor's degree in business administration from an accredited college or university in the United States. That evaluation

was prepared by a credentials evaluation service. A credentials evaluation service may only evaluate an individual's foreign education for the purpose of establishing its equivalence to a United States degree, not prior work experience. 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). An individual's prior work experience may only be evaluated, for educational equivalence purposes, by an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience. 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). For this additional reason, the petition may not be approved.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden and the appeal shall accordingly be dismissed.

**ORDER:** The appeal is dismissed. The petition is denied.